

Internal Revenue Service

Number: **201235001**

Release Date: 8/31/2012

Index Number: 61.00-00, 817.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-103536-12

Date: May 30, 2012

Taxpayer =

Parent =

Separate =

Account

Disregard 1 =

Disregard 2 =

Separate =

Account 1

Separate =

Account 2

Dear :

This is in response to the letter submitted by your authorized representative, dated January 13, 2012, and additional submissions, requesting rulings on whether the assets held in certain segregated asset accounts are to be treated as owned by Taxpayer for federal income tax purposes.

FACTS

I. TAXPAYER

Taxpayer is a life insurance company within the meaning of § 816(a) of the Internal Revenue Code (the "Code") and is taxable under § 801. Taxpayer is a stock life insurance company. Taxpayer is a wholly-owned indirect subsidiary of Parent. Taxpayer and Parent file a consolidated federal income tax return on a calendar year basis. Taxpayer is engaged in the business of writing life insurance and individual and group annuity contracts.

II. THE CONTRACTS

Taxpayer issues group annuity contracts (the “Contracts”) based on segregated asset accounts (collectively, the “Separate Account”). With respect to the Separate Account, two types of Contracts are sold to Contract owners: (1) Pension Contracts that meet the definition of a “pension plan contract” under § 818(a), and (2) Non-Pension Contracts that do not meet the definition of a “pension plan contract” under § 818(a).

Taxpayer established the Separate Account pursuant to state law as a pooled, open-ended separate account. Gains or losses, realized or unrealized, on assets held are credited or charged to the Separate Account without any regard to any other income, gains, or losses of Taxpayer. All of the assets of the Separate Account are owned by Taxpayer, but under no circumstances are deposits in the Separate Account, or income, gains, or losses in the Separate Account credited or charged to Taxpayer’s general account.

All funds in the Separate Account are invested in real estate investments. Taxpayer uses a real estate investment affiliate to manage the assets of the Separate Account. As Taxpayer deems appropriate, amounts allocated to the Separate Account are invested and reinvested primarily in existing income-producing real properties through direct property ownership or indirectly through such vehicles as joint ventures, general or limited partnerships, limited liability companies or REITs, mortgage loans, and other loan or debt secured by direct or indirect interests in real property. Generally, the assets of the Separate Account consist of ownership interests in real estate investments that are generally available to the public. Taxpayer balances the number and size of the investments so that the Separate Account is adequately diversified within the meaning of § 817(h) and the regulations thereunder. Taxpayer may from time to time decide not to accept additions by Contract owners to the Separate Account. Taxpayer will invest and reinvest the assets of the Separate Account at the times and in the amounts Taxpayer determines in its sole discretion.

Taxpayer holds some of the Separate Account assets directly, and other assets indirectly, through Disregard 1, a wholly-owned subsidiary of Taxpayer that is a disregarded entity for federal income tax purposes. All assets of the Separate Account held through Disregard 1 are owned by Disregard 2, a wholly-owned subsidiary of Disregard 1 that is a disregarded entity for federal income tax purposes.

Under the Contracts, a Contract owner at any time may direct Taxpayer to provide payment of life, stated amount, or stated period annuities with respect to amounts held under the Contract and the purchase price will be determined from the annuity purchase rate schedule guaranteed and set forth in the Contract.

III. PROPOSED RESTRUCTURING

For non-tax reasons, including to facilitate further the administrative operation related to the Separate Account's current investment assets and the potential acceptance of additional cash flows for liquidity and diversification purposes, Taxpayer plans to change how it holds the assets in the Separate Account. Taxpayer will engage in the following restructuring of the Separate Account:

- (1) Taxpayer will transfer to Disregard 1 substantially all of the assets held by the Separate Account not currently held through Disregard 1.
- (2) Disregard 1 will contribute such assets to Disregard 2.
- (3) Taxpayer will create another entity ("NewCo"), for the purpose of providing real estate investment through investment in Disregard 1.
- (4) To the extent any Non-Pension Contracts exist at such time, Taxpayer will divide the Separate Account into two sub-accounts: "Separate Account 1" and "Separate Account 2". If there are no Non-Pension Contracts at such time, Taxpayer will not divide the Separate Account into sub-accounts and the Separate Account will be treated as Separate Account 1. Separate Account 1 will hold the pro rata share of ownership interests in Disregard 1 allocable to the Pension Contracts and any directly held assets not transferred from the Separate Account to Disregard 1. Separate Account 2 will hold the pro rata share of ownership interests in Disregard 1 allocable to the Non-Pension Contracts.
- (5) As part of the creation of NewCo, Taxpayer will contribute all of the assets allocated to Separate Account 2 (i.e., the pro rata share of the ownership interest in Disregard 1 allocable to the Non-Pension Contracts) to NewCo. At such time, the sole investment held by Taxpayer in Separate Account 2 will be ownership interests in NewCo, and NewCo's sole investment will consist of the contributed ownership interest in Disregard 1.
- (6) As part of the notification process regarding the proposed restructuring of the Separate Account, the Non-Pension Contracts will be amended, at the mutual agreement of Taxpayer and the Non-Pension Contract owners, such that the Non-Pension Contract owners' investment will be limited to investment of the Non-Pension Contract funds in NewCo. In addition to Taxpayer's ownership interests in NewCo, ownership interests in NewCo will be held directly, or indirectly, by non-insurance company investors that are unrelated to Taxpayer (i.e., ownership interests in NewCo will be publicly available).

IV. REPRESENTATIONS

In addition to the facts presented above, Taxpayer has also made the following representations:

- (1) The proposed restructuring and creation of Disregard 1 will not change Taxpayer's broad investment discretion over all future investments made

- with funds held in the Separate Account or Separate Account 1 for the Pension Contracts.
- (2) Taxpayer is not required to invest future money available to the Separate Account or Separate Account 1 in Disregard 1 or any other particular asset, and has not promised Pension Contract owners that it will do so.
 - (3) Neither the Pension Contract owners nor the Non-Pension Contract owners have any legal, equitable, direct, or indirect ownership interest in any of the Separate Account assets. Rather, the contract owners only have a contractual claim against Taxpayer to collect cash under the terms of the Contracts.
 - (4) The Pension Contract holders have no legal, equitable, direct, or indirect ownership interest in any of the Separate Account 1 assets. Rather, the Pension Contract owners only have a contractual claim against Taxpayer to collect cash under the terms of the contracts.
 - (5) Per Taxpayer's guidelines neither Taxpayer nor the investment manager is permitted to solicit Pension Contract owners, Non-Pension Contract owners or prospective contract owners to make recommendations about the selection, quality, or rate or return of any specific investment or group of investments held in the Separate Account.
 - (6) Per Taxpayer's guidelines neither Taxpayer nor the investment manager is permitted to solicit Pension Contract owners or prospective contract owners to make recommendations about the selection, quality, or rate or return of any specific investment or group of investments held in Separate Account 1.
 - (7) Access to Separate Account 1 will be available exclusively through the purchase of a variable contract within the meaning of § 817(d).
 - (8) The Separate Account is adequately diversified within the meaning of section 817(h) and the regulations thereunder.
 - (9) The distribution-at-death provisions contained in the Non-Pension Contracts satisfy the requirements of section 72(s).

LAW

In Rev. Rul. 77-85, 1977-1 C.B. 12, the Service concluded that an individual purchaser of a variable annuity contract who retained "significant incidents of ownership" over the assets held in the custodial account was treated as the owner of those assets for federal income tax purposes. In Rev. Rul. 80-274, 1980-2 C.B. 27, the Service applied Rev. Rul. 77-85 to conclude that if a purchaser of an annuity contract could select and control the certificates of deposit supporting the contract, then the purchaser was considered the owner of the certificates of deposit for federal income tax purposes. Similarly, in Rev. Rul. 81-225, 1981-2 C.B. 12, which was clarified and amplified by Rev. Rul. 2003-92, 2003-2 C.B. 350, the Service concluded that investments in mutual fund shares that funded annuity contracts were considered to be

owned by the purchasers of the annuity contracts if the mutual fund shares were available for purchase either directly or indirectly by the general public.

In Rev. Rul. 82-54, 1982-1 C.B. 11, the amounts held in a segregated asset account underlying a variable contract were invested as the contractholder directed in shares of any or all of three open-ended investment companies ("mutual funds"). Each mutual fund represented a different broad, general investment strategy. Shares of the mutual fund were available only to insurance company segregated asset accounts. While the mutual funds were not available to the general public, the mutual funds held common stocks, bonds, and money market instruments, all of which were available for purchase by members of the general public. The public availability of the assets held by the mutual funds did not lead to the conclusion that the issuing insurance company was simply a conduit between the contractholders and the mutual funds or the underlying assets of the mutual funds. Instead, Rev. Rul. 82-54 held that the insurance company, not the contractholders, was the owner of the mutual fund shares for federal income tax purposes.

In Rev. Rul. 2003-91, 2003-2 C.B. 347, a variable contractholder did not have control over segregated account assets sufficient to be deemed the owner of the assets. The variable contracts at issue were funded by a separate account that was divided into 12 sub-accounts. The issuing insurance company could increase or decrease the number of sub-accounts at any time, but there would never have been more than 20 sub-accounts available under the contracts. Each Sub-account offered a different investment strategy. Interests in the sub-accounts were available solely through the purchase of a contract. The investment activities of each sub-account were managed by an independent investment advisor. There was no arrangement, plan, contract, or agreement between the contractholder and the issuing insurance company or between the contractholder and the independent investment advisor regarding the availability of a particular sub-account, the investment strategy of any sub-account, or the assets to have been held by a particular sub-account. Other than a contractholder's right to allocate premiums and transfer funds among the available sub-accounts, all investment decisions concerning the sub-accounts were made by the issuing insurance company or the independent investment advisor in its sole and absolute discretion. A contractholder had no legal, equitable, direct, or indirect interest in any of the assets held by a sub-account but had only a contractual claim against the issuing insurance company to collect cash in the form of death benefits or cash surrender values under the contract. The Service concluded that based on all the facts and circumstances, the contractholder did not have direct or indirect control over the separate account or any sub-account asset, and therefore the contractholder did not possess sufficient incidents of ownership over the assets supporting the variable contracts to be deemed the owner of the assets for federal income tax purposes.

In Rev. Rul. 2003-92, 2003-2 C.B. 350, the purchasers of variable annuity and variable life insurance contracts were able to allocate their premiums among 10 different

sub-accounts. Each sub-account invested in interests in a partnership. None of the partnerships was a publicly traded partnership under § 7704 and all of the partnerships were exempt from registration under the federal securities laws. Interests in each partnership were sold in private placement offerings and were sold only to qualified purchasers that were accredited investors or to no more than 100 accredited investors. The Service held that in situations in which the sub-accounts held interests in partnerships available for purchase other than by purchasers of annuity or variable contracts from an insurance company, the contractholder was the owner of the interests in the partnerships held by the sub-accounts for federal income tax purposes. The Service further held that in a situation in which the sub-accounts held interests in partnerships available for purchase only by the purchase of an annuity, life insurance contract, or other variable contracts from an insurance company, the insurance company was the owner of the interests in the partnerships held by the sub-accounts for federal income tax purposes.

ANALYSIS

Pension Contracts:

The determination of whether the Pension Contract owners possess sufficient incidents of ownership over Separate Account 1 to be deemed the owners of the assets supporting the Pension Contracts for federal income tax purposes depends on all of the relevant facts and circumstances.

The Pension Contract owners may not select or direct a particular investment to be made with respect to Separate Account 1. The Pension Contract owners may not sell, purchase, or exchange assets held in Separate Account 1. All investment decisions concerning Separate Account 1 are made by Taxpayer or its investment manager in its sole and absolute discretion.

The investment strategy of Separate Account 1 of investing in real estate assets is sufficiently broad to prevent the Pension Contract owners from making particular investment decisions through investment in Separate Account 1. Only Taxpayer may add or substitute investment strategies in the future. Taxpayer is not required to invest future money available to the Separate Account or Separate Account 1 in Disregard 1 or any other particular asset, and has not promised the Pension Contract owners that it will do so. In addition, per Taxpayer's guidelines neither Taxpayer nor its investment manager is permitted to solicit the Pension Contract owners to make recommendations about the selection, quality, or rate or return of any specific investment or group of investments held in Separate Account 1.

Investment in Separate Account 1 is available solely through the purchase of a Pension Contract. The possibility that the Separate Account 1 may invest in publicly available securities does not cause the Pension Contract owners to be treated as

owners of Separate Account 1's assets for federal income tax purposes. Separate Account 1 is not publicly available.

Non-Pension Contracts:

Through Separate Account 2 the Non-Pension Contract owners hold interests only in NewCo, the interests of which are available for purchase by the general public. Interests in Separate Account 2 are not available exclusively through the purchase of a Pension Contract from Taxpayer. Therefore, the Non-Pension Contract owners are the owners of the interests in Separate Account 2 for federal income tax purposes.

Holdings:

- (1) Following the proposed restructuring described above, and assuming Taxpayer is the owner for tax purposes of the assets that fund the Pension Contracts prior to the commencement of the proposed restructuring, Taxpayer will be considered the owner for federal income tax purposes of the Separate Account 1 assets.
- (2) Following the proposed restructuring described above, the Non-Pension Contract owners will be treated as the owners for federal income tax purposes of the Separate Account 2 assets that fund the Non-Pension Contracts.

The use of the term "restructuring" in this letter is for descriptive convenience only and is not intended to have any substantive legal effect.

Except as expressly provided herein, no opinion is expressed concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

DONALD J. DREES, JR.
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Financial Institutions & Products)